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10/792,240	03/03/2004	Sumihito Konishi	17518	4767

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EXAMINER	
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ART UNIT	**PAPER NUMBER**
3739	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/792,240	KONISHI, SUMIHITO	
	Examiner	Art Unit	
	Philip R. Smith	3739	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *08 June 2007*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-19* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-19* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *03 November 2004* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

[01] A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 6/8/2007 has been entered.

Claim Rejections - 35 USC § 112

[02] The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

[03] Claim 2 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

[04] Claim 2 recites "the communication portion". There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

[05] The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

[06] The rejection of claims 1-19 as being anticipated by Shibata (2004/0044269) set forth in the Office action of 3/7/2007 are withdrawn in view of the amendments of 6/8/2007.

Claim Rejections - 35 USC § 103

[07] The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

[08] The disclosure of Shibata (2004/0044269) shall not preclude patentability under this section, in accordance with 35 U.S.C. 103(c).

[09] Claims 1-2,4-5,8,10,12,16-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Simmons (5,701,904) in view of Wall (6,114,370).

[10] With regard to claim 1:

[10a] Simmons discloses an endoscopic surgical system, comprising:

- an endoscopic system ("valise 2," 2/36) provided in an operating room and usable with an anesthesia-apparatus related system connected to a predetermined communication circuit;
- a transceiver ("modem 215," 6/35) provided in the anesthesia-apparatus related system, which can send and receive information; and
- an information creating portion ("computer 150," 5/61, see Fig 9) for creating combined anesthesia-endoscopic image information by associating anesthesia information sent from the anesthesia-apparatus related system through the transceiver and endoscopic image information detected in the endoscopic system with a same patient ("the motherboard 190, which contains the microprocessor, stores the data received by the cards 160 [audio card], 170 [data I/O card 170 recevies digital data from the pulse oximeter 104 and the ECG monitor 119], and 180 [video grabber card], in mass storage 205," 6/27).

[10b] Simmons does not disclose that:

- said anesthesia-apparatus related system includes an anesthesia administering apparatus for administering anesthesia to a patient.

[10c] Wall discloses that "[midazolam hydrochloride] may be injected intravenously as an agent for conscious sedation prior to short diagnostic or endoscopic procedures."

[10d] At the time of the invention, it would have been obvious to a person of ordinary skill in the art to use an intravenous injector to sedate a patient being subjected to an endoscopic procedure. A skilled artisan would be motivated to do so "for preoperative sedation (induction of sleepiness or drowsiness and relief of apprehension) and to impair memory of perioperative events" (3/12-24).

[11] With regard to claim 2:

[11a] Simmons further discloses that:

- the endoscopic system has an image recording portion ("mass storage 205" 6/27) for chronologically and sequentially recording an operated-part image information, which is the endoscopic image information of the patient.
- the anesthesia-apparatus related system has an anesthesia information recording portion ("mass storage 205" 6/27, as noted above) for chronologically and sequentially recording anesthesia related information, which is the anesthesia information related to anesthesia in an operation;
- the information creating portion having an image-read-out control portion ("video driver card 210" 6/30) provided in the anesthesia apparatus related system for reading out and outputting to [a] communication portion (e.g., "modem 215" as noted above) operated-part image information recorded in the image recording portion based on

time information communicated from the anesthesia-apparatus related system by the communication portion; and

- a recording control portion provided in the anesthesia-apparatus related system for controlling the anesthesia information recording portion so that the operated-part image information sent from the endoscopic system to the anesthesia-apparatus related system through the communication portion can be associated with the anesthesia related information of a same patient and can be recorded as the combined anesthesia-endoscopic image information (as noted above, "motherboard 190, which contains the microprocessor, stores the data received by the cards 160, 170, and 180 in mass storage").

[12] With regard to claim 4: Simmons further discloses:

[12a] the anesthesia-apparatus related system having a heart rate measuring instrument ("stethoscope audio pickup 72" 5/39), a sphygmomanometer ("blood pressure sensor" 5/25), and an oxygen saturation measuring instrument ("pulse oximeter 104" 5/9));

[12b] the information creating portion being a CPU (as noted above); and

[12c] the transceiver including a centralized operation panel interface (inherent to "computer 150"), a network interface ("modem 215" as noted above) and an endoscopic system interface ("video grabber card 180" as noted above).

[13] With regard to claim 5: as noted above, Simmons further discloses that the information creating portion is a system controller provided in an operating room, and the system controller includes a CPU, a communication interface, a centralized operation panel interface, a display interface, an anesthesia-apparatus related system interface and a storage device.

[14] With regard to claim 8,10: Simmons discloses that the information creating portion further comprises:

[14a] an information transfer select portion ("motherboard 190... stores the data... in mass storage 205, or otherwise processes it, as appropriate" 6/25-27) for selecting whether or not information of the anesthesia-apparatus related system is transferred to a recording device provided in a server connected to a hospital network;

[14b] an information-to-be-recorded select portion ("190" as noted above) for selecting whether or not the information of the anesthesia-apparatus related system is added to the storage device of the server connected to the hospital network;

[14c] an information-to-be-recorded checking portion ("190" as noted above) for checking the information of the anesthesia-apparatus related system, which is selected in the information-to-be-recorded select portion; and

[14d] an information-to-be-recorded add portion ("190" as noted above) for registering the information of the anesthesia-apparatus related system, which is checked in the information-to-be-recorded checking portion, with the recording device of the server connecting to the hospital network.

[15] With regard to claim 12: as noted above, Simmons discloses that the device operational information is heart-rate, blood-pressure and oxygen-saturation information.

[16] With regard to claim 16: as noted above, Simmons discloses an endoscopic surgical system, comprising:

[16a] an anesthesia-apparatus related system having an anesthesia administering apparatus for administering anesthesia to a patient, and an anesthesia information recording portion for

chronologically and sequentially recording anesthesia-related information relating to anesthesia in an operation;

[16b] an endoscopic system having an image recording portion for chronologically and sequentially recording operated-part image information of a patient;

[16c] an information creating portion provided in the anesthesia apparatus related system for creating combined anesthesia-endoscopic image information by associating anesthesia information sent from the anesthesia-apparatus related system and endoscopic image information detected in the endoscopic system with a same patient;

[16d] a communication portion for communicating between the anesthesia-apparatus related system and the endoscopic system;

[16e] an image-read-out control portion provided in the endoscopic system for reading out and outputting to the communication portion the operated-part image information recorded in the image recording portion based on time information communicated from the anesthesia-apparatus related system to the endoscopic system by the communication portion; and

[16f] a recording control portion provided in the anesthesia-apparatus related system for controlling the anesthesia information recording portion to record the operated-part image information sent from the endoscopic system to the anesthesia-apparatus related system through the communication portion under the control of the image-read-out control portion in connection with the anesthesia-related information of a same patient.

[17] With regard to claim 17: as noted above, Simmons discloses an endoscopic surgical system, comprising:

[17a] an information creating portion provided in an anesthesia apparatus related system for creating combined anesthesia-endoscopic image information by associating anesthesia information sent from the anesthesia-apparatus related system and endoscopic image information detected in the endoscopic system with a same patient, said anesthesia-apparatus related system including an anesthesia administering apparatus for administering anesthesia to a patient;

[17b] an information transfer select portion for selecting whether or not information of the anesthesia-apparatus related system is transferred to a recording device provided in a server connecting to a hospital network;

[17c] an information-to-be-recorded select portion for selecting whether or not information of the anesthesia-apparatus related system is added to the recording device of the server connecting to the hospital network;

[17d] an information-to-be-recorded checking portion for checking the information of the anesthesia-apparatus related system, which is selected in the information-to-be-recorded select portion; and

[17e] an information-to-be-recorded adding portion for registering the information of the anesthesia-apparatus related system, which is checked in the information-to-be-recorded checking portion, with the recording device of the server connected to the hospital network.

Additional Claim Rejections - 35 USC § 103

[18] Claims 3,6,9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Simmons (5,701,904) and Wall (6,114,370) and in further view of MacDonald (2004/0153443).

[19] With regard to claim 3:

[19a] Simmons in view of Wall discloses an anesthesia- apparatus related system, as noted above.

[19b] Simmons in view of Wall does not disclose that the anesthesia- apparatus related system is provided in each of multiple operating rooms separately and is connected to a hospital network managed by a server over a communication circuit.

[19c] MacDonald discloses multiple anesthesia-apparatus related systems ("monitoring devices 102" [0017]-[0019]) which may be provided in multiple operating rooms separately, connected to a hospital network ("monitor system 111" [0019]) managed by a server over a communication circuit ("via Internet, wired communications network, wireless communication network, etc." [0019]).

[19d] At the time of the invention, it would have been obvious to a person of ordinary skill in the art to connect the anesthesia-apparatus related system disclosed by Simmons to a hospital network as disclosed by MacDonald. A skilled artisan would be motivated to do so in order to "provide a tool to organize the information generated by the patient monitoring devices during a large number of surgery cases in a manner which facilitates retrospective learning" ([0022]).

[20] With regard to claim 6: as noted above, MacDonald discloses that the information creating portion transfers information of the endoscopic system to the hospital network through the anesthesia-apparatus related system and stores the information in the server.

[21] With regard to claim 9:

[21a] As noted above, Simmons in view of Wall discloses an information creating portion.

[21b] Simmons in view of Wall does not disclose that the information creating portion has a patient information input portion for receiving inputs of patient information and adds information of the anesthesia-apparatus related system to patient information input through the patient information input portion.

[21c] MacDonald discloses that "Patient records 202-206 included in database 120 may be indexed or labeled to associate each of records 202-206 with a particular patient or a particular surgery case" [0024].

[21d] At the time of the invention, it would have been obvious to a person of ordinary skill in the art to include patient information such as that collected by Simmons in view of Wall in a patient record as taught by MacDonald. A skilled artisan would be motivated to do so in order to "recognize certain conditions (e.g., abnormal rhythm on induction) by examining relevant data and when such condition is detected, the waveform analysis application 113 may write an entry in the corresponding patient record indicating the occurrence of such condition and when it occurred" [0029].

Additional Claim Rejections - 35 USC § 103

[22] Claims 7,11,13-15,18-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Simmons (5,701,904), Wall (6,114,370) and MacDonald (2004/0153443), and in further view of Oka (5,797,838).

[23] With regard to claim 7: As noted above, Simmons in view of Wall and MacDonald discloses that the information creating portion associates anesthesia information with endoscopic image information, and that the combined anesthesia-endoscopic image information may be transferred to the hospital

network and stored-in the server. Said transfer is inherently capable of being "subsequent" to any event, including the issuance of a warning code.

[24] Simmons in view of Wall and MacDonald does not disclose that a warning code is issued when an abnormality is detected in the anesthesia information.

[25] Oka discloses the following in 4/52-59:

> According to another feature of the second aspect of the invention, the physical-information-image-signal producing device comprises abnormality informing means for producing the physical-information image signal, when the judging means makes a positive judgment, and not producing the physical-information-image signal, when the judging means makes a negative judgment.

[26] At the time of the invention, it would have been obvious to a person of ordinary skill in the art that the invention of Simmons in view of Wall and MacDonald inform the operator of abnormal anesthesia information as taught by Oka. A skilled artisan would be motivated to do so in order to "recognize a sudden change of the physical condition of the subject" (1/36-38).

[27] With regard to claim 11: Simmons in view of Wall, MacDonald and Oka discloses that the information creating portion further comprises:

[27a] an upper limit value/lower limit value input portion for being used to input an upper limit value and lower limit value of information of the anesthesia-apparatus related system ("corresponding predetermined normal range," Oka, 8/25);

[27b] an abnormality detecting portion for detecting an abnormality of the anesthesia-apparatus related system based on the upper limit value and lower limit value input by the upper limit value/lower limit value input portion ("control device 56" Oka, 8/31);

[27c] a function-to-be-linked select portion for, when an abnormality of the anesthesia-apparatus related system is detected by the abnormality detecting portion, selecting a

function within the endoscopic system to be recorded in connection with the abnormality of the anesthesia-apparatus related system ("At Step SA5, the CPU of the control device 56 controls the physical-information-image-signal producing circuit 58 to produce an abnormal-physical-information-image signal representing a physical-information image corresponding to an abnormal physical information, in a manner different from that in which a normal-physical-information-image signal represents a physical-information image corresponding to a normal physical information" Oka, 8/31-40);

[27d] an abnormality recording portion ("patient records 202-206" as disclosed by MacDonald) for implementing a function within the endoscopic system selected in the function-to-be-linked select portion and recording the abnormality of the anesthesia-apparatus related system; and

[27e] a filing portion ("database 120" as disclosed by MacDonald) for filing information before and after the detection of the abnormality recorded by the abnormality recording portion.

[28] With regard to claim 13: Simmons in view of Wall, MacDonald, and Oka discloses:

[28a] the information-to-be-recorded select portion disclosed by Simmons in view of Wall, MacDonald, and Oka is inherently capable of "selecting" whether or not the information before and after the abnormality detection filed by the filing portion is added to the hospital network;

[28b] the information-to-be-recorded checking portion disclosed by Simmons in view of Wall, MacDonald, and Oka is inherently capable of "checking" the information before and after the abnormality detection selected by the information-to-be-recorded select portion; and

[28c] the information-to-be-recorded adding portion disclosed by Simmons in view of Wall, MacDonald, and Oka is inherently capable of "registering" the information before and after the abnormality detection checked by the information-to-be-recorded checking portion with the hospital network.

[29] With regard to claim 14: As noted above, Oka discloses that the information creating portion further comprises:

[29a] a code managing portion for assigning a warning code to the information before and after the abnormality detection filed by the filing portion; and

[29b] an abnormality registration portion for sending to the endoscopic system and registering with the endoscopic system the information before and after the abnormality detection having the warning code assigned by the code managing portion.

[30] With regard to claim 15: Oka discloses a determination portion for determining whether or not a predetermined period of time ("predetermined proportion of the interval time" 9/16) has passed from the record of the information before and after the abnormality detection in the abnormality recording portion and for determining whether or not a predetermined period of time has passed from the detection of an abnormality of the anesthesia- apparatus related system by the abnormality detecting portion.

[31] With regard to claim 18: as noted above, Simmons in view of Wall, MacDonald and Oka discloses an endoscopic surgical system, comprising:

[31a] an information creating portion provided in an anesthesia apparatus related system for creating combined anesthesia-endoscopic image information by associating anesthesia information sent from the anesthesia-apparatus related system and endoscopic image

information detected in the endoscopic system with a same patient, said anesthesia apparatus related system including an anesthesia administering apparatus for administering anesthesia to a patient;

[31b] an upper limit value/lower limit value input portion for receiving inputs of an upper limit value and lower limit value of information of the anesthesia-apparatus related system;

[31c] an abnormality detecting portion for detecting an abnormality of the anesthesia-apparatus related system based on the upper limit value and lower limit value, which are input in the upper limit value/lower limit value input portion;

[31d] a function-to-be-linked select portion for, when an abnormality of the anesthesia-apparatus related system is detected by the abnormality detecting portion, selecting a function in the endoscopic system to be recorded in connection with the abnormality of the anesthesia- apparatus related system;

[31e] an abnormality recording portion for implementing the function in the endoscopic system, which is selected in the function-to-be-linked select portion, and recording the abnormality of the anesthesia-apparatus related system; and

[31f] a filing portion for filing the information before and after the detection of the abnormality, which is recorded by the abnormality recording portion.

[32] With regard to claim 19: As noted above, Simmons in view of Wall, MacDonald and Oka discloses:

[32a] an information-to-be-recorded select portion for selecting whether or not the information before and after the abnormality detection, which is filed in the filing portion, is added to information in the recording device provided in the server connected to the hospital network;

[32b] an information-to-be-recorded checking portion for checking the information before and after the abnormality detection, which is selected in the information-to-be-recorded select portion; and

[32c] an information-to-be-recorded adding portion for registering the information before and after the abnormality detection, which is checked in the information-to-be-recorded checking portion, with the recording device of the server connected to the hospital network.

Response to Arguments

[33] Applicant's arguments have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

[34] Any inquiry concerning this communication or earlier communications from the examiner should be directed to Philip R. Smith whose telephone number is (571) 272 6087 and whose email address is philip.smith@uspto.gov. The examiner can normally be reached between 9:00am and 5:00pm.

[35] If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda Dvorak can be reached on (571) 272 4764.

[36] Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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